UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

FILED
At .....m.
Mar 22, 1974
Francis T. Grandys, Clerk
U. S. District Court

LOUISE BOND, individually and on behalf of her minor children; ROSE EDWARDS, as President, NEW DAY WELFARE RIGHTS ORGANIZATION, an unincorporated association; SARAH JUDE, as president, GARY AFDC MOTHERS' ORGANIZATION WELFARE RIGHTS ORGANIZATION, an unincorporated association; NORMA JEAN MOORE, as President, EAST CHICAGO WELFARE RIGHTS ORGANIZATION, an unincorporated association; individually and on behalf of all others similarly situated,

Plaintiffs

v.

No. 73 H 184

WAYNE A. STANTON, individually and in his capacity as Administrator of the Indiana State Department of Public Welfare; MARION M. HILGER, ROBERT M. CURLESS, ARVELLA M. STANTON, ROBERT G. WATSON, JR., JAMES W. BURNETT, JR., individually and in their capacity as members of the State Board of Public Welfare; JOHN KELLEY, individually and in his capacity as Director of the Lake County Department of Public Welfare,

Defendants

MEMORANDUM OPINION

This action for redress under 42 U.S.C., Section 1983, has been initiated by plaintiffs because of the admitted failure of the State of Indiana to implement the Early and Periodic Screening, Diagnoses, and Treatment (EPDST) program pursuant to 42 U.S.C., Sections 1396 et seq. as of December 31, 1973. Both sides have filed motions for summary judgment. This court will resolve the questions presented by the cross-motions for summary judgment and determine whether or not the state has complied with the provisions and requirements of 42 U.S.C., Section 1396, 45 CFR 249.10(a)(3) and (b)(4)(ii) as of March 15, 1974.

Oral argument was heard by this court on November 5, 1973 on the cross-motions for summary judgment. The parties were given until March 1, 1974 to augment and supplement their arguments with any relevant material which would be appropriate under Rule 56, Federal Rules of Civil Procedure, for the court's consideration prior to ruling on the motions. No further oral argument was contemplated.

Plaintiffs have requested the following relief: a) a declaratory judgment, b) a preliminary injunction and a permanent injunction, c) compensatory and punitive damages, d) appointment of a receiver, e) submission of defendant's proposals to implement EPSDT for plaintiffs' approval, f) all costs and attorney's fees, and g) all other just and equitable relief.

Defendants ask that the court grant a motion of summary judgment in their favor ". . . under the provisions of Trial Rule 56 (sic)". Defendants have admitted that the EPSDT program was not in effect throughout the

state as of July 1, 1973 as required by federal regulation 45 CFR 249.10. However, defendants contemplated that the EPSDT program would have been in effect by January 1974. Defendants claim that there is no factual issue since the named plaintiffs Bond, Edwards, Jude, and Moore received $8,600.79 in medicaid benefits for 1970-73. The Deputy Attorney General stated, "It is obvious that they know the way to the doctor..."

The plaintiffs were allowed to proceed in this action without prepayment of fees and costs pursuant to an order of Chief Judge George N. Beamer on July 23, 1973.

ANALYSIS AND FINDINGS

Lake County, one of the two most populous counties in Indiana, was not included in the Eight County Pilot Project as set out in the Department of Public Welfare Bulletin No. 70 dated May 17, 1973. Therefore, under Department of Public Welfare Bulletin No. 70 (revised), the implementation of EPSDT in all counties other than the eight included in the pilot project was not even contemplated until January 1974, which was well beyond the statutory deadline of July 1, 1973. 45 CFT 249.10.

A careful reading of the original and supplemental materials filed in this case indicates, in a clear and convincing fashion, that little, if any, headway has been made by the State as far as the implementation of the EPSDT program is concerned. From the information supplied by the Lake County Welfare Department as well that supplied by the state, it appears to a certainty that the welfare procedures are nearly the same as they were last year. No special training is required for the caseworkers and there have been only minimal attempts to communicate this program to either the caseworkers or to the ultimate

recipients. A few letters and directives, clothed in bureaucratic prose, have been issued to the local units of the Department of Public Welfare of Indiana. In fact, there is no evidence of a comprehensive EPSDT program, not even any semblance of any screening program however minimal.

This court can sympathize with the State Welfare Department's difficulties in following the changes decreed by the Department of Health, Education and Welfare and having to implement these changes on the local level. However, there is no reasonable doubt that the state has not complied with the provisions of the Social Security Act, 42 U.S.C., Section 1396d(a)(4)(b), relating to EPSDT as of March 1, 1974. Over two years have elapsed since the initial part of the EPSDT program was supposed to have been implemented and in full effect by the State of Indiana. The provisions of the Social Security Act and the regulations enacted in 45 CFR 249.10 are binding upon the participating states as long as they voluntarily choose to participate in the welfare programs sponsored in part by federal funding. This court has the power to review state welfare provisions and to prohibit the state use of any federal funds for non-compliance with statutory regulations and can enjoin the state from further use of federal monies. *Rosado v. Wyman,* 397 U.S. 397, 90 S. Ct. 1207 (1970).

The court is cognizant of the problems involved in the administration of a large and often controversial bureaucracy. No erudite drafting could create a sweeping ukase that would relieve the situation that caused this dispute. However, the court must attempt to fashion an appropriate remedy under the circumstances.

The court has read the opinion and order of Judge Noel P. Fox, U.S. District Court for the Western District of

Michigan, Southern Division, in *Dominguez v. Milliken*, No. G 198-72, an unpublished opinion involving a similar case, the failure of a state to implement EPSDT as per federal regulation. While not a precedent, Judge Fox's opinion in *Dominguez id* has been a helpful source of information.

ORDER

The class consisting of all named plaintiffs and all persons up to age 21 in Indiana who are eligible for medicare benefits under the provisions of Title XIX of the Social Security Act is determined to be a proper class under Rule 23(a) and 23(b)(2), Federal Rules of Civil Procedure.

The court finds that there is no genuine issue as to any material fact. The State of Indiana has failed to implement EPSDT as required by 42 U.S.C., Section 1396, 45 CFR 249.10(a)(3). Defendants' motion for summary judgment is DENIED. Plaintiffs motion for summary judgment is GRANTED in part and DENIED in part.

Defendants are hereby adjudged to be acting in contravention of 42 U.S.C., Section 1396(a)(4)(b) and the regulations established pursuant to that section, 45 CFR 249.10 (b)(4)(ii).

Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, are hereby enjoined from continuing to administer EPSDT in violation of 42 U.S.C., Section 1396d(a)(4)(b) and the regulations established thereunder, 45 CFR 249.10(a)(3).

Defendants are ordered to have a program of Early and Periodic Screening, Diagnoses and Treatment in effect in every county in Indiana by July 1, 1974. Such program shall meet the minimum standards set out in the above-

mentioned federal regulations and in substantial compliance with any and all pertinent guidelines issued by the Department of Health, Education and Welfare.

Ruling on plaintiffs' request for attorney's fees will be reserved pending the filing of supplemental briefs directed to this issue and an accounting of actual costs.

Plaintiffs' request for compensatory and punitive damages is DENIED. Compensatory damages in this case would be extremely speculative and difficult to prove. Punitive damages against the State would not serve their proper function of deterrence and punishment. As against individual defendants, there is no showing of willful and malicious actions by said defendants so as to deprive plaintiffs of their civil rights. Absent such evidence, punitive damages will not be assessed against any of the named individual defendants.

Plaintiffs request to appoint a receiver is DENIED.

Plaintiffs are denied all other requested relief at this time. This order, pursuant to Rule 56(b), Federal Rules of Civil Procedure, is intended to be a final judgment as to the claims decided.

Enter 3/22/74

/s/ ALLEN SHARP

Judge, United States District Court

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 74-1409
WAYNE STANTON, et al.,

Defendants-Appellants,

v.

LOUISE BOND, et al.,

Plaintiffs-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division—
—No. 73 H 184
Allen Sharp, *Judge.*

ARGUED SEPTEMBER 13, 1974 — DECIDED OCTOBER, 30, 1974

Before SWYGERT, *Chief Judge,* FAIRCHILD and SPRECHER *Circuit Judges.*

SPRECHER, *Circuit Judge.* We are asked to determine whether failure of a state to comply with the requirements of the early and periodic screening, diagnosis and treatment (for persons under 21 years of age) provisions of the Social Security Act justifies injunctive relief.

Plaintiffs, representing the class of persons under age 21 who are eligible for medical benefits under Title XIX of the Social Security Act, brought this action under 42 U.S.C. § 1983, against various Indiana state officials, challenging their failure to implement a mandatory federal health program for needy children.

On March 22, 1974, the district court partially granted plaintiffs' motion for summary judgment and enjoined the state officials from continuing to administer the state program in violation of the statute and regulations, and ordered that a complying program be instituted by July 1, 1974. The defendants have appealed.

I

In 1965 Congress added Title XIX to the Social Security Act, which created a comprehensive program of medical assistance for the needy (popularly called Medicaid).[1] The medical assistance program is administered by the states[2] with the federal government participating through financial grants to the states.[3] States are not required to operate medical assistance plans but if they elect to do so they must comply with the requirements of Title XIX.[4]

Title XIX requires[5] that each state plan provide five basic services: inpatient hospital services, outpatient hospital services, laboratory and x-ray services, skilled nursing home services and physicians' services.[6] Originally nine other medical services were optional with the states,[7]

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1 42 U.S.C. §§ 1396—1396g.

2 *Id.* § 1396a.

3 *Id.* § 1369b.

4 *Id.* §§ 1396a, 1396c.

5 *Id.* § 1396a(a)(13).

6 *Id.* §§ 1396d(a)(1)—(5).

7 The nine original optional services were (1) medical or remedial care furnished by state licensed practitioners; (2) home health care services; (3) private duty nursing services; (4) clinic services; (5) dental services; (6) physical therapy; (7) prescribed drugs, dentures, prosthetic devices and eyeglasses; (8) other diagnostic, screening, preventive and rehabilitative services; and (9) tubercular and mental institution services for the aged. *Id.* §§ 1396d(a)(6)—(14).

and additional optional categories of care have been added by Congress from time to time.

In 1967 Congress amended one of the five mandatory requirements to, in effect, require each participating state to furnish a sixth basic service:[8]

> [E]ffective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary.

The addition of "early and periodic screening and diagnosis" and "treatment" (EPSDT) of persons under the age of 21 was the result of a growing need for child health care among the needy.[9]

Early in 1967, President Johnson recommended to Congress a comprehensive program for American children, one recommendation calling for programs providing early diagnosis and treatment of children with handicaps.[10] The President pointed out that over 3.5 million children who needed medical help and another million crippled children did not receive the needed medical services.[11]

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8 42 U.S.C. § 1396d(a)(4)(B). Section 1396d(a)(4) originally provided for mandatory skilled nursing home services but the 1967 amendment designated the existing provisions as clause (A) and added the above quoted provisions as clause (B).

9 Comment, *Child Health Care: Unresolved Dilemma of Section 1905(a)(4)(B) of the 1967 Social Security Act Amendments*, 59 Geo. L.J. 965 (1971).

10 *President Johnson, Welfare of Children*, H.R. Doc. No. 54, 90th Cong., 1st Sess. (1967).

11 *Id.* at 7.

Studies have shown that one out of every three poor children in the United States is so anemic as to require immediate medical attention. Severe malnutrition causes permanent brain damage, stunted physical growth, and increased susceptibility to disease.[12]

Senator Mondale pointed out to the Senate in 1972 that in Mississippi, the first state to aggressively implement EPSDT, "Examination of 1,178 youngsters revealed 1,301 'medical abnormalities.' " These included 305 cases of multiple cavities, 241 cases of anemia, 97 cases of faulty vision, 217 cases of enlarged tonsils, and significant numbers of hernia, intestinal parasites and poor hearing cases.[13]

Most childhood handicaps can be prevented or cured or corrected if detected early enough. One-third of the chronically handicapped conditions of children in the United States could be corrected or prevented by preschool care, and continuing care to age eighteen would correct or prevent 60 percent.[14]

Despite the urgency of the need for EPSDT and despite the July 1, 1969 deadline for its proposed effective date as established by Congress, final regulations of the Department of Health, Education and Welfare, implement-

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12 McGovern, *Hunger in America,* N.Y. Times Encyclopedic Almanac 304 (1970).

13 118 Cong. Rec. 11106 (1972).

14 White House Conference on Children, *Report to the President,* 184 (1970). Routine throat screening of children age 5-15 with respiratory illness or unexplained fever could prevent 75 percent of rheumatic fever cases. Suslaw, Vieta and Myenbert, *Cost of Rheumatic Fever and Its Prevention,* 55 Rep. Pub. Health 429 (1965). Early detection and treatment of lead poisoning, which leads to mental retardation, seizure disorder, kidney diseases and other handicaps, can reduce blood lead to safe levels before permanent handicaps occur. Lin-Fu, *Preventing Lead Poisoning in Children,* 2 Children Today 2 (1973).

ing Title XIX, were not published in the Federal Register until November 9, 1971,[15] did not become effective until February 7, 1972, and gave the states further leeway by providing that by February 7, 1972[16]

> [T]he State plan must provide that screening, diagnosis, and such additional treatment will be available to all eligible children under 6 years of age, and must specify the progressive stages by which screening, diagnosis, and such additional treatment will be available to all eligible individuals under 21 no later than July 1, 1973.

Except for the extreme leniency shown in extending the time for full compliance by the states for four years beyond the congressional date, the HEW regulations are fairly stringent. They commence by providing that "[a] State plan for medical assistance under Title XIX of the Social Security Act *must* . . . [s]pecify that at least the first five items of medical and remedial care and services, set forth in paragraph (b)(1) through (5) of this section, *will be provided* to the categorically needy."[17]

Paragraph (b)(4)(ii), which provides for EPSDT,[18] falls within the mandatory category. Paragraph (a)(3)

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15 36 Fed. Reg. 21409 (1971).

16 45 C.F.R. § 249.10(a)(3)(iv) (1972).

17 *Id.* § 249.10(a)(1) (emphasis added).

18 *Id.* § 249.10(b)(4)(ii) provides:

> *Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.* Early and periodic screening and diagnosis of individuals under the age of 21 who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for

then states that any plan must provide, with respect to the item of care set forth in paragraph (b)(4)(ii), four areas of coverage.[19]

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any item of medical or remedial care and services included under this section for individuals under the age of 21. Such care and services may be provided under the plan to individuals under the age of 21, even if such care and services are not provided, or are provided in lesser amount, duration or scope to individuals 21 years of age or older.

19 *Id.* § 249.10(a)(3) provides:

(i) For establishment of administrative mechanisms to identify available screening and diagnostic facilities, to assure that individuals under 21 years of age who are eligible for medical assistance may receive the services of such facilities, and to make available such services as may be included under the State plan;

(ii) For identification of those eligible individuals who are in need of medical or remedial care and services furnished through title V grantees, and for assuring that such individuals are informed of such services and are referred to title V grantees for care and services, as appropriate;

(iii) For agreements to assure maximum utilization of existing screening, diagnostic, and treatment services provided by other public and voluntary agencies such as child health clinics, OEO Neighborhood Health Centers, day care centers, nursery schools, school health programs, family planning clinics, maternity clinics, and similar facilities;

(iv) That early and periodic screening and diagnosis to ascertain physical and mental defects, and treatment of conditions discovered within the limits of the State plan on the amount, duration, and scope of care and services, will be available to all eligible individuals under 21 years of age; and that, in addition, eyeglasses, hearing aids, and other kinds of treatment for visual and hearing defects, and at least such dental care as is necessary for relief of pain and infection and for restoration of teeth and maintenance of dental health, will be available, whether or not otherwise included under the State plan, subject, however, to such utilization controls as may be imposed by the State agency. If such screening, diagnosis, and such additional treatment are not available by the effective date of these regulations to all

The regulations seek "to assure that individuals under 21 years of age who are eligible for medical assistance may receive the services of such facilities . . ."[20] and "assuring that such individuals are informed of such services. . . ."[21] States are required to enter into "agreements to assure maximum utilization of existing screening, diagnostic, and treatment services provided by other public and voluntary agencies. . . ."[22] State plans are to assure that the necessary services "will be available to all eligible individuals under 21 years of age. . . ."[23]

The final regulation guides for the EPSDT program were issued by HEW on June 28, 1973, as part of the Medical Assistance Manual, Part 5, Sections 5/70/00 *et. seq.* (MSA-PRG-21). The guidelines begin with the following introduction:

> The 1967 amendments to title XIX of the Social Security Act added a requirement to Medicaid that was intended to direct attention to the importance of preventive health services and early detection and treatment of disease in children eligible for medical assistance. This corresponded to a similar amendment to title V of the Act. Through this amendment *Congress intended to require States to take aggressive steps* to screen, diagnose and treat children with health problems. Congress was concerned about the variations from State to State in the rates of children treated for handicapping conditions and health prob-

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eligible individuals under 21 years of age, the State plan must provide that screening, diagnosis, and such additional treatment will be available to all eligible individuals under 21 no later than July 1, 1973.

20 *Id.* § 249.10(a)(3)(i).

21 *Id.* § 249.10(a)(3)(ii).

22 *Id.* § 249.10(a)(3)(iii).

23 *Id.* § 249.10(a)(3)(iv).

> lems that could lead to chronic illness and disability. Senate and House Committee reports emphasized the need for extending outreach efforts to create awareness of existing health care services, to stimulate the use of these services, and to make services available so that young people can receive medical care before health problems become chronic and irreversible damage occurs.
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> MSA-PRG-21, § 5-70-20 (A) (emphasis added).

There follows comprehensive descriptions of what is required in the nature of case finding, screening, diagnosis and treatment. The guidelines include the following:

> The State agency must have an outreach program to inform AFDC families and other eligible individuals about the screening program and to encourage them to take advantage of this service.
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> The State agency must seek out and develop agreements with facilities and practitioners throughout the State that can provide screening and diagnostic services for early casefinding purposes.
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> • • •
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> To actively seek out eligible individuals for the EPSDT program, the State agency should develop procedures: (a) to inform parents that these services are available for their children, and when and where they are provided; (b) to make sure that they understand the nature and purpose of the screening program; (c) to enlist the help of other community agencies in casefinding activities; and (d) to assure that families are helped, if they need such assistance, to obtain transportation to the screening center and for diagnostic studies and treatment.

Id. §§ 5-70-20 (B)(6), (B)(7), (D)(1).

Congress, as part of the Social Security Amendments of 1972, enacted a penalty for failure to provide child health screening services under Medicaid:[24]

> Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1974, be reduced by 1 per centum . . . of such amount if such State fails to—
>
> (1) inform all families in the State receiving aid to families with dependent children under the plan of the State approved under this part of the availability of child health screening services under the plan of such State approved under subchapter XIX of this chapter,
>
> (2) provide or arrange for the provision of such screening services in all cases where they are requested, or
>
> (3) arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services.

II

The mandatory obligation upon each participating state to aggressively notify, seek out and screen persons under 21 in order to detect health problems and pursue those problems with the needed treatment is made unambiguously clear by the 1967 act and by the interpretative regulations and guidelines.

Indiana is a participating state. On May 17, 1973, defendant Wayne A. Stanton, administrator of the Indiana

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24 42 U.S.C. § 603(g) (effective October 20, 1972).

Department of Public Welfare, issued that department's General Administrative DPW Bulletin No. 70, in which he advised all of the state's 92 county departments of public welfare:

> An approved plan for . . . early and periodic screening, diagnosis and treatment of those persons under age 21 was to have been in effect as of February, 1972. Indiana did not meet that deadline. However it is now mandatory that immediate steps be taken to implement this Federal law in order to satisfy the question of compliance that has been repeatedly raised by the Department of Health, Education and Welfare regarding this matter . . . .
>
> The implementation will be gradual. Eight County Departments will begin operation of the plan during *May, 1973.* The remaining County Departments will move into the process on a planned basis until the program is in effect in all 92 County Departments by around *January 1, 1974.* [Emphasis in original.]

Subsequently, letters were sent to Medicaid recipients which advised that caseworkers would visit the recipient and that "the caseworkers will want to know if you feel that your children have any health problems." Medicaid providers were advised that caseworkers would give each recipient a form "with instructions to contact their choice of appropriate Medicaid providers, should a health problem be reported by the recipient, observed by the caseworker, or should the recipient request any type of medical service. . . ."

In defendants' reply brief, they summarize the nature of Indiana's compliance with EPSDT:

> Any of the eligible children in this state can secure all of the requested services merely by requesting them from their local health provider . . . . [Recipients]

> need merely take their children to the health providers of their choice and obtain for their children the required services.

On March 22, 1974, the district court in its memorandum opinion granting in part plaintiffs' motion for summary judgment, found:

> A careful reading of the original and supplemental materials filed in this case indicates, in a clear and convincing fashion, that little, if any, headway has been made by the State as far as the implementation of the EPSDT program is concerned. From the information supplied by the Lake County Welfare Department as well as that supplied by the state, it appears to a certainty that the welfare procedures are nearly the same as they were last year. No special training is required for the caseworkers and there have been only minimal attempts to communicate this program to either the caseworkers or to the ultimate recipients. A few letters and directives, clothed in bureaucratic prose, have been issued to the local units of the Department of Public Welfare of Indiana. In fact, there is no evidence of a comprehensive EPSDT program, nor even any semblance of any screening program however minimal.

The court enjoined defendants "from continuing to administer EPSDT in violation of 42 U.S.C., Section 1396d (a)(4)(B) and the regulations established thereunder" and ordered defendants to have a program meeting the minimum standards of, and in substantial compliance with, the regulations and guidelines, "in effect in every county in Indiana by July 1, 1974."

There is no genuine issue as to any material fact and the plaintiffs were entitled to judgment as a matter of law.

Indiana's somewhat casual approach to EPSDT hardly conforms to the aggressive search for early detection of

child health problems envisaged by Congress. It is difficult enough to activate the average affluent adult to seek medical assistance until he is virtually laid low. It is utterly beyond belief to expect that children of needy parents will volunteer themselves or that their parents will voluntarily deliver them to the providers of health services for early medical screening and diagnosis. By the time an Indiana child is brought for treatment it may too often be on a stretcher. This is hardly the goal of "early and periodic screening and diagnosis." EPSDT programs must be brought to the recipients; the recipients will not ordinarily go to the programs until it is too late to accomplish the congressional purpose.

III

Defendants have argued that even if Indiana's EPSDT program is not in compliance with federal requirements, the sole remedy is reduction of federal payments to the state in accordance with 42 U.S.C. § 603(g) "with respect to quarters in fiscal years beginning after June 30, 1974."

Declaratory and injunctive relief at the behest of "those individuals most directly affected by the administration of [a] program" are available "should the State not develop a conforming plan within a reasonable period of time" when using federal funds. *Rosado v. Wyman,* 397 U.S. 397, 420-21 (1970). *See also King v. Smith,* 392 U.S. 309 (1968). Congress knows how to deprive a court of broad equitable power when it chooses to do so. *Renegoti-*

ation Board v. Bannercraft Clothing Co., 415 U.S. 1; 19 (1974). It did not choose to do so in this instance.[25]

JUDGMENT IS AFFIRMED.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

25 Plaintiffs claim federal question jurisdiction under 28 U.S.C. § 1331 and aver that the value of the program of which they are deprived exceeds $10,000 to each plaintiff. Clearly, to any child with a serious undetected impairment EPSDT may well be of the value claimed, and defendants have made no contest on the point.

42 U.S.C. § 1396d

§ 1396d. Definitions—Medical assistance

For purposes of this subchapter—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentist's services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter; who are—

(i) under the age of 21,

(ii) relatives specified in section 606(b)(1) of this title with whom a child is living if such child, except for section 606(a)(2) of this title, is (or would, if needy, be) a dependant child under part A of subchapter IV of this chapter,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, or XVI of this chapter, or

(vii) blind or disabled as defined in section 1382c of this title, with respect to States not eligible to participate in the State plan program established under subchapter XVI of this chapter,

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

(2) outpatient hospital services;

(3) other laboratory and X-ray services;

(4) (A) skilled nursing facility services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older (B) effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and (C) family planning services and supplies furnished (directly or under arrange-

ments with others) to individuals of child-bearing age (including minors who can be considered to be secually active) who are eligible under the State plan and who desire such services and supplies;

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Sec.

249.10 Amount, duration, and scope of medical assistance.

249.11 Free choice of providers of medical services: State plan requirement.

249.31 [Reserved]

249.32 Direct payment to certain recipients for physicians' or dentists' services.

249.33 Standards for payment for skilled nursing home care.

249.40 Cost sharing and similar charges; State plan requirements.

249.41 Coordination of title XIX with part B of title XVIII, Social Security Act.

249.70 Liens and recoveries.

249.81 Time limitations for Federal financial participation in medical assistance payments.

249.82 Contracts with health insurance organizations, fiscal agents, and private nonmedical institutions.

AUTHORITY: The provisions of this Part 249 issued under sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

NOTE: For interim policies published under this part, see 34 F.R. 9788, June 24, 1969.

§ 249.10 Amount, duration, and scope of medical assistance.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

(1) Specify that at least the first five items of medical and remedial care and services, set forth in paragraph (b) (1) through (5) of this section, will be provided to the categorically needy.

(2) Specify that, if the plan includes the medically needy, at least the following items of medical and remedial care and services will be provided to the medically needy:

(i) The first five items set forth in paragraph (b) (1) through (5) of this section; or

(ii) *(a)* Any seven of the items set forth in paragraph (b) (1) through (14) of this section; and

(b) If the plan includes inpatient hospital services or skilled nursing home services, physicians' services to eligible individuals when they are patients in a hospital or skilled nursing home, even though physicians' services as defined in paragraph (b) (5) of this section are not otherwise included for the medically needy.

(3) In carrying out the requirements in subparagraphs (1) and (2) of this paragraph with respect to the item of care set forth in paragraph (b) (4) (ii) of this section, provide:

(i) For establishment of administrative mechanisms to identify available screening and diagnostic facilities, to assure that individuals under 21 years of age who are eligible for medical assistance may receive the services of such facilities, and to make available such services as may be included under the State plan;

(ii) For identification of those eligible individuals who are in need of medical or remedial care and services furnished through title V grantees, and for assuring that such individuals are informed of such services and are referred to title V grantees for care and services, as appropriate;

(iii) For agreements to assure maximum utilization of existing screening, diagnostic, and treatment services provided by other public and voluntary agencies such as child health clinics, OEO Neighborhood Health Centers, day care centers, nursery schools, school health programs, family planning clinics, maternity clinics, and similar facilities;

(iv) That early and period screening and diagnosis to ascertain physical and mental defects, and treatment of conditions discovered within the limits of the State plan on the amount, duration, and scope of care and services, will be available to all eligible individuals under 21 years of age; and that, in addition, eyeglasses, hearing aids, and other kinds of treatment for visual and hearing defects, and at least such dental care as is necessary for relief of pain and infection and for restoration of teeth and maintenance of dental health, will be available, whether or not otherwise included under the State plan, subject, however, to such utilization controls as may be imposed by the State agency. If such screening, diagnosis, and such additional treatment are not available by the effective date of these regulations to all eligible individuals under 21 years of age, the State plan must provide that screening, diagnosis, and such additional treatment will be available to all eligible children under 6 years of age, and must specify the progressive stages by which screening, diagnosis, and such additional treatment will be available to all eligible individuals under 21 no later than July 1, 1973.

42 U.S.C. § 603(f) and (g)

§ 603. Payment to States: computation of amounts; Federal share of assistance payments; social and supportive services; appropriation; family planning services and supplies; reduction of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to section 1320b of this title) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

[*See main volume for text of (1) and (2)*]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

[*See main volume of text for (A) and (B)*]

The services referred to in subparagraph (A) shall include only—

[*See main volume for text of (C)*]

(D) under conditions which shall be prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement

with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

[See main volume for text of (4)]

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

[See main volume for text of (b)]

(c) Notwithstanding any other provision of this chapter, the Federal share of assistance payments under this part shall be reduced with respect to any State for any fiscal year after June 30, 1973, by one percentage point for each percentage point by which the number of individuals certified, under the program of such State established pursuant to section 602(a) (19) (G) of this title, to the local employment office of the State as being ready for employment or training under part C, is less than 15 per centum of the average number of individuals in such State who, during such year, are required to be registered pursuant to section 602(a) (19) (A) of this title.

(d) (1) Notwithstanding subparagraph (A) of subsection (a) (3) of this section the rate specified in such subparagraph shall be 90 per centum (rather than 75 per centum) with respect to social and supportive services provided pursuant to section 602(a) (19) (G) of this title.

(2) Of the sums authorized by section 601 of this title to be appropriated for the fiscal year ending June 30, 1973, not more than $750,000,000 shall be appropriated to the Secretary for payments with respect to services to which paragraph (1) applies.

(e) Notwithstanding any other provision of subsection (a) of this section, with respect to expenditures during any calendar quarter beginning after December 31, 1972 (as found necessary by the Secretary for the proper and efficient administration of the plan) which are attributable to the offering, arranging, and furnishing, directly or on a contract basis, of family planning services and supplies, the amount payable to any State under this part shall be 90 per centum of such expenditures.

(f) Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1973, be reduced by 1 per centum (calculated without regard to any reduction under subsection (g) of this section) of such amount if such State—

(1) in the immediate preceding fiscal year failed to carry out the provisions of section 602(a) (15) (B) of this title as pertain to requiring the offering and arrangement for provision of family planning services; or

(2) in the immediately preceding fiscal year (but, in the case of the fiscal year beginning July 1, 1972, only considering the third and fourth quarters thereof), failed to carry out the provisions of section 602 (a) (15) (B) of this title with respect to any individual who, within such period or periods as the Secretary

may prescribe, has been an applicant for or recipient of aid to families with dependent children under the plan of the State approved under this part.

(g) Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1974, be reduced by 1 per centum (calculated without regard to any reduction under subsection (f) of this section) of such amount if such State fails to—

(1) inform all families in the State receiving aid to families with dependent children under the plan of the State approved under this part of the availability of child health screening services under the plan of such State approved subchapter XIX of this chapter,

(2) provide or arrange for the provision of such screening services in all cases where they are requested, or

(3) arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services.

As amended Dec. 28, 1971, Pub.L. 92-223, § 3(a) (8), (9), 85 Stat. 805; Oct. 20, 1972, Pub.L. 92-512, Title III, § 301(b)—(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub.L. 92-603, Title II, §§ 299E(d), 299F, 86 Stat. 1462, 1463.